

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations

Article 1.1, Quality Standards

Section 3800.1, Acala and Pima Quality Standards

Section 3800.2, Referendum

INITIAL STATEMENT OF REASONS/

PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance
the Regulations are Intended to Address

These regulations are intended to address the obligations of the Secretary to adopt regulations to maintain the integrity of approved Acala and Pima cottons and prevent contamination of those types of cotton. These regulations are also intended to address the obligations of the Secretary to consider and take appropriate action on recommendations made by the San Joaquin Valley Cotton Board which relate to promotion and protection of cotton planting and growing in the State.

Specific Purpose and Factual Basis

The specific purpose of Section 3800.1 is to establish the quality standards for Acala and Pima cottons in the San Joaquin Valley Quality Cotton District (District) to protect the integrity of District cotton production. The specific purpose of Section 3800.2 is to clarify when the Board may hold a referendum pertaining to cotton quality standards. The factual basis for the determination by the Department that adoption of these regulations is necessary is as follows:

In 1925, the California Legislature established a district to provide the most marketable, highest quality, and most uniform cotton possible in order to bring the best possible monetary return to growers. At that time, production was limited to the Acala cotton type only. In 1991, the law was revised to allow the growing of the extra-long fiber and extremely high quality Pima cotton type in the district and to rename the district as the San Joaquin Valley Quality Cotton District (District). The District includes Fresno, Kern, Kings, Madera, Merced, and Tulare Counties and produces approximately 95% of California's cotton.

Existing law provides that the San Joaquin Valley Cotton Board (Board) shall establish a separate Acala and Pima standard for all cotton grown within the District. When determining each standard, the Board shall consider fiber length, strength, uniformity, micronaire, seed quality, productivity, resistance to disease, including Verticillium wilt, and spinning characteristics. Existing law also provides that the Board annually review test data and approve for release and planting within the District, cotton varieties which meet the existing Acala or Pima quality standard but are superior in some meaningful respect (Section 52891, Food and Agricultural Code).

Existing law provides that the Department shall adopt regulations to maintain the integrity of approved Acala or Pima cotton and prevent contamination of those types of cotton (Section 52901, Food and Agricultural Code). Existing law also provides that the Board may hold a referendum vote whenever the Board proposes changes to the Acala or Pima quality standard (Section 52936, Food and Agricultural Code).

The Acala quality standard was Acala GC-510 until March 1, 1994 when the Board established a new standard of Acala Maxxa based primarily on short staple length problems with Acala GC-510 and the quantity of acreage planted with Acala Maxxa. During the period of 1988 through 1994, Acala Maxxa has consistently had greater lint production per acre than Acala GC-510. During the period of 1988 through 1993, Acala Maxxa also performed better than the previous standard of Acala GC-510 in yield, fiber length, and yard evenness. Changes to raise the quality standards and the requirement that experimental varieties may only be approved for release and planting within the District when the cotton varieties meet the existing Acala or Pima quality standard and are superior in some meaningful respect, are intended to enhance the continued improvement of high quality cotton production in the District.

On April 23, 1996, Judge James T. Ford, Judge of the Superior Court of the State of California, in and for the County of Sacramento, issued Order No. 95CS02577 which requires that the California Administrative Procedure Act be utilized in the selection of the Pima and Acala quality standards for use in the District. On May 28, 1996, the Board recommended that the District quality standards be adopted by regulation as being embodied by Acala Maxxa and Pima S-7 and that the regulations also provide that the Board may hold a referendum vote whenever the Board proposes to change those standards. The adoption of Section 3800.1 provided for continuation of the quality standards

which have been used by the Board for comparison of nonapproved cottons in the testing program for several years. They were generally accepted as the industry standard within the District.

On March 7, 2006, the Board approved Acala Summit as the new Acala standard. To be approved for commercial release within the District, all Acala cottons must meet or exceed this new industry standard. However, non-approved varieties may still be grown in the District, but are tagged California Upland, California Pima or “SJV Experimental” cottons. Acala Summit was approved by the Board due to the data that supported Acala Summit as making incremental increases in quality standards over the previous standard, Acala Maxxa. One of the most important considerations in making this change is the need for cotton breeders to have a stable target or standard to aim for when developing new varieties. It takes several years for a seed company to develop and market a new variety. If substantial changes are made to the standard, many of the varieties in their development program may be eliminated because an element in the standard is too high. Acala Summit makes incremental increases in key areas where quality is measured including fiber length, uniformity, strength, elongation, micronaire, fineness, maturity, yarn strength, and yarn elongation. In all other quality areas this variety is equal. There are no areas in which the quality is less and the lint yield of this variety is also slightly higher.

As Acala Summit makes only “incremental” increases in the quality standards, the Board has not proposed a substantive change in the Acala standard. On March 28, 2006, the Board distributed a news release to the affected San Joaquin Valley Cotton District industry notifying them of its intent to change the Acala standard from Acala Maxxa to Acala Summit. As of October 20, 2006, the Board has not been contacted by an affected industry member claiming that the use of Acala Summit would be a substantive change or requesting that a referendum be held. In fact, incremental increases in the cotton quality standards for the District should be expected over time; that is one of the functions of the Board. Therefore, since the Board is not proposing a substantive change to the Acala standard, a referendum did not need to be held as required by California Food and Agricultural Code Section 52891, subsection (d). Additionally, the Board has elected not to hold a referendum as authorized under California Food and Agricultural Code Section 52936 and Section 3800.2 of the California Code of Regulations. The Board also reviewed the data pertaining to Pima S-7 and decided there was no need for a new Pima standard. Therefore, the amendment of Section 3800.1 will allow the Board’s testing and approval programs for nonapproved cotton varieties to continue and be in compliance with Judge Ford’s ruling.

The proposed amendment of Section 3800.1 is necessary to provide for continuation of appropriately high standards for Acala cottons in the District to help ensure high quality cotton production in the District and continuation of the yield and price advantages now experienced for District cottons. The regulation is necessary to protect the \$605 million (2006 value) San Joaquin Valley cotton industry. If the standards were lower, production of high quality cotton and prices would most likely decline which would have a negative economic impact on growers in the District. Amendment of Section 3800.2 is necessary to clarify that conduct of an optional referendum may be held specifically when considering a change from Acala Summit and Pima S-7 to other varieties as quality standards, when such changes are not substantive.

The proposed amendment of Section 3800.1 will establish the San Joaquin Valley Quality Cotton District (District) quality standard for Acala cotton as Acala Summit and the District quality standard for Pima cotton will remain as Pima S-7. The effect of this regulation will be that experimental (nonapproved) cotton varieties being tested within the District will be compared to Acala Summit or Pima S-7 by the San Joaquin Valley Cotton Board when reviewing test data for the purpose of determining if a variety may be approved for release and planting within the District. Nonapproved varieties which do not meet the standard or that do meet the standard but are not superior in some meaningful respect, cannot be approved by the Board for release as an approved Acala or Pima variety.

The proposed amendment of Section 3800.2 will establish that the Board may hold a referendum whenever it proposes that a variety other than Acala Summit or Pima S-7 embodies the Acala or Pima quality standard. The effect of this regulation will be to clarify that the Board is not required to hold a referendum and that, specifically, the referendum may be held when proposing that a variety other than Acala Summit or Pima S-7 embodies the quality standard for the District.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Secretary of Food and Agriculture has determined that the proposed regulations do not impose a mandate on local agencies or school districts. The Secretary also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulations on private persons or businesses is not expected to be significant.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

The proposed regulations will establish the new quality standards for Acala cottons and make no changes to the Pima standard in the San Joaquin Valley Quality Cotton District (District). The proposed change will also provide that the San Joaquin Valley Cotton Board may hold a referendum whenever proposing that another Acala variety or Pima variety that embodies either of these standards.

These proposed regulations are intended to protect the integrity of the District's cotton production. Cotton lint and cottonseed produced in the San Joaquin Valley (Fresno, Kern, Kings, Madera, Merced, and Tulare Counties) in 2006 was valued at \$605 million. The District has developed a solid reputation for consistently producing the highest quality cottons in the country. District growers receive 4-10 cents per pound (2002-2006) more for their cotton lint as compared to the best prices in the rest of the country. This price advantage averages \$42 million per year (2002-2006). Also, yields are among the highest of any region in the U.S. and average 64 pounds greater production per acre (2002-2006) when compared to the closest competitive area's yield. This yield advantage averages \$32 million per year (2002-2006). Therefore, the total annual average price and yield

advantage of District cottons is \$74 million (2002-2006) which would be in jeopardy if the District's high quality cotton production or its reputation were compromised.

The maintenance of the quality of cotton production and integrity of the District program necessitates the review of experimental varieties to determine if they produce cotton of adequate yield and quality to be planted within the District. This determination is performed by the Board through review of test data for experimental varieties compared to varieties which embody the quality standards for Pima and Acala cottons in the District. Without quality standards, new experimental varieties could not be compared as required by law and, therefore, could not be approved for release for commercial planting within the District. Without appropriately high quality standards, the integrity of the District's program and the excellent reputation of the District's cottons would be compromised. The growers in the District would be limited to production of varieties already approved for planting and, eventually, would be at a competitive disadvantage because they would not be able to take advantage of new, improved varieties when they are developed. Therefore, there would be a significant adverse economic impact on District growers if the regulations were not adopted. The adoption of the regulations will establish the standards for Acala and Pima cottons for the District. Those growers wanting to produce cottons which are not approved as meeting these standards would not be allowed to commercially produce the nonapproved cottons in the District. The regulations would not have a significant adverse economic impact on those growers because they are already prohibited by statute from planting the nonapproved varieties. They also can grow nonapproved varieties in California outside of the District.

The Department has made an assessment that the proposed amendment to the regulation would not: 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses within California; or, 3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Secretary of the Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in proposing the adoption of Sections 3800.1 and 3800.2:

Email from Mike Colvin to Stephen Brown dated October 23, 2006.

United States Department of Agriculture, National Agricultural Statistics Service, forecasted yields for cotton produced in California and Arizona, printed October 17, 2006.

Memorandum of September 20, 2006 to Stephen Brown from Michael Colvin and its attachments, San Joaquin Valley Cotton Board, Meeting Minutes, March 7, 2006 and Table 4. "Acala standards QS for SJVCB, 2003-2005."

August 22, 2006 letter from William Stone to Stephen Brown.

CALCOT, Cotton Marketing Services, "Pulse of the Market," dated July 21, 2006.

Supima News, American Pima Spot Quotations, dated June 15, 2006.

"Bulletin," San Joaquin Valley Cotton Board, March 28, 2006.